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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 381st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 May 1999, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.381/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Third periodic report of Italy (continued) (CAT/C/44/Add.2)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, Mr. Abeti (Italy) took a place at the Committee table.

2. Mr. EL NASRY (Country Rapporteur) read out the following text containing the conclusions and recommendations adopted by the Committee concerning the third periodic report of Italy:

"1. The Committee considered the third periodic report of Italy (CAT/C/44/Add.2) at its 374th, 377th and 381st meetings, held on 3, 4 and 6 May 1999 (CAT/C/SR.374, 377 and 381), and has adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the timely submission of the third periodic report of Italy and thanks the representatives of the State party for their good oral presentation and their collaborative and constructive attitude in the dialogue with the Committee.

B. Positive aspects

3. The Committee welcomes:

(a) the introduction in Parliament of a bill aimed at adding the crime of torture as an autonomous crime and the setting-up of a special fund for the victims of acts of torture;

(b) the introduction of a number of modifications in the regime of precautionary measures to protect arrested persons and detainees from ill-treatment or torture, such as the rule requiring that questioning outside the court has to be documented by sound or audio-visual recordings (Law No. 332 of 1995);

(c) the passing by Parliament of Law No. 40 of 6 March 1998 governing immigration and aliens which, in particular, grants aliens who are legally residing in the territory of the State party, parity with Italian citizens;

(d) the assurances contained in the report that a different and new policy of accepting foreigners is to be energetically carried forward;

(e) the consideration by the Italian Parliament of a bill that accords humanitarian protection and the right of asylum and intends to institute an organic asylum regime;

(f) the fact that foreign prisoners who are granted measures alternative to detention may also be granted temporary work permits.

C. Factors and difficulties impeding the application of the provisions of the Convention

4. While it does not underestimate the difficulties created by the presence of a large number of foreigners of different cultures and nationalities on Italian territory, the Committee expects that the new law on immigration along with the continued efforts on the part of the authorities will help ease the situation, especially since many of these foreigners had to flee their countries of origin due to severe conditions of unrest.

D. Subjects of concern

5. Despite the efforts of the authorities, the prison system remains overcrowded and lacking in facilities, which makes the overall conditions of detention not conducive to the efforts of preventing inhuman or degrading treatment or punishment. In this regard, the Committee notes with concern that reports of cases of ill-treatment in prison continued and that many of them involved foreigners.

6. The Committee is also concerned over the lack of training in the field of human rights, in particular, the prohibition against torture to the troops participating in peacekeeping operations and the inadequate number of military police accompanying them, which was responsible in part for the unfortunate incidents that occurred in Somalia.

E. Recommendations

7. The Committee recommends that:

(a) the legislative authorities in the State party proceed to incorporate into domestic law the crime of torture as defined in article 1 of the Convention and make provision for an appropriate system of compensation for torture victims;

(b) the Committee be informed of the progress and result of the judicial proceedings resulting from the incidents in Somalia;

(c) that all prisoners' correspondence addressed to international bodies of investigation and settlement of disputes be excluded from 'censor checks' by prison personnel or other authorities."

3. Mr. ABETI (Italy), on behalf of the head of the delegation, who could not be present, thanked the members of the Committee for their interest and attention.

4. The delegation of Italy withdrew.

The public part of the meeting was suspended at 3.10 p.m. and resumed at 3.45 p.m.

Third periodic report of the Libyan Arab Jamahiriya (continued) (CAT/C/44/Add.3)

5. At the invitation of the Chairman, the members of the Libyan delegation resumed their places at the Committee table.

6. Mrs. AL-HAJJAJI (Libyan Arab Jamahiriya) thanked the members of the Committee for their constructive observations and dialogue, which would give renewed impetus to the observance of human rights in her country. She welcomed the Committee's position regarding the lifting of sanctions, which had seriously curtailed the rights, for instance, to life, food and development.

7. Her delegation was disappointed that the Arabic version of the report was not yet available, but hoped that it would be published as soon as possible. Any information that had been requested by the Committee but was not immediately available would be forwarded at the earliest opportunity by the Permanent Mission.

8. Mr. TLEBA (Libyan Arab Jamahiriya), replying to some of the questions raised, said that, where conditions of detention were concerned, the law provided for regular inspections of the activities of the security forces and that it was therefore unlikely that breaches of the Convention would occur. The Jamahiriya was in no way opposed to the activities of non-governmental organizations (NGOs) and was prepared to cooperate fully with any NGO that wished to visit national prisons.

9. Legislation provided for access by detainees to counsel and to members of their family, with the sole exception, in the latter case, of the initial period of pre-trial detention, where deemed necessary by the Attorney-General for reasons of national security. Since 1997, the provisions of the Convention were taught as part of the training curriculum of prison and law enforcement personnel. National legislation provided that any individual who breached the Convention was accountable for his act. Any complaint by a detainee of torture, if confirmed by a medical report, would lead to an inquiry with a view to ascertaining responsibility. Should the victim consider that the Attorney-General's Office had failed to take appropriate action in response to a complaint he could apply directly to a judge.

10. The delegation was not in a position to respond to the request for statistics regarding the number of prisoners who had been subjected to long periods of solitary confinement or had been denied access to counsel or to family members, since no records existed of any such cases. Legislation provided that, upon expiry of a maximum of 45 days' pre-trial detention, the

detainee could apply to the Appeal Court, composed of three judges, which would decide on the action to be taken. Convicted prisoners likewise had the right of access to their lawyer while they were serving their sentences.

11. Three cases existed of allegations of torture by police officers, which had been reported to the office of the Attorney-General in accordance with the normal procedure in such cases; the judges who had been assigned to investigate the complaints had ruled that they were unfounded.

12. Libyan law did not provide for expulsion of refugees or other foreigners to their country of origin.

13. He was pleased to report that a new mechanism had been established to investigate complaints of human rights violations, including torture; it functioned within the office responsible for monitoring respect for human rights.

14. A public servant found guilty of committing an act of torture was required to pay compensation to the victim, who might also apply for reparation from the State, as the public servant's employer.

15. The prison system accorded utmost importance to rehabilitation and provided workshops and vocational training facilities in prisons; prisoners could sell what they thus produced, the proceeds being paid to them after their release, and they were better prepared to find employment upon completion of their sentence. Many prisoners benefited from the educational and cultural activities available to them.

16. In the event of any contradiction, the provisions of the Convention prevailed over those contained in domestic legislation. Torture was indeed defined as a crime under law and carried severe penalties. The law prescribed the sentences which pertained to particular offences; however, judges could invoke extenuating circumstances in order to commute, for instance, capital punishment to life imprisonment.

17. The Higher Council of the Judiciary was composed of a judge of the Supreme Court, a judge of the Appeal Court, a representative of the Department of Public Prosecutions and other judicial bodies, together with the Minister of Justice himself, who was a member of the judiciary.

18. A death sentence must be approved by the People's Congresses and a series of conditions was attached. The condemned person was permitted to meet relatives prior to execution at a place removed from the place where it was to be carried out. Facilities must be provided for the observances prescribed by the condemned person's religion. The execution must take place within a prison or other closed area. The sentence was read to all present and the condemned person had a right to make a final statement. It was stipulated that the execution must be carried out in the presence of the public prosecutor, physician, prison director, warden and defence lawyer. The punishment - hanging for civilians, firing squad for the military - could not be carried out on a religious or other holiday. In the case of a pregnant woman condemned to death, the execution of the sentence was postponed until after the delivery.

19. As a result of the mediation of friendly countries, the extradition of the two Libyan citizens suspected of being involved in the Lockerbie case had finally been approved, resulting in the lifting of sanctions. The extradition had been carried out on the understanding that the Jamahiriya firmly believed in the suspects' innocence, and that they would be accorded proper treatment and a fair trial. The economic embargo had cost the Libyan Arab Jamahiriya some US$ 26.5 billion, causing untold suffering to Libyan citizens and undermining their fundamental rights. Moreover, the sanctions had also lacked legitimacy under international law, according to a ruling of the International Court of Justice. Domestic rules governing the extradition of alleged criminals were described in paragraphs 49-53 of the report.

20. Statistics relating to torture allegations could not be provided since records were made only of confirmed cases. In future, however, the Committee would be kept abreast of any such cases brought before the public prosecutor.

21. One member had maintained that too light a sentence had been imposed in Case No. 76 of 1994 ([Para. 23 (iv) of the report]). The incident had been judged to be a minor one, and the junior police officer involved had been under pressure from his superior. The relevant jurisprudence was well developed in the Jamahiriya and the court had been in possession of all the facts. Court rulings could not be criticized since they were binding. The punishment meted out to persons convicted of committing torture depended on the severity of the case.

22. Responding to further questions put by the Committee, he said that police stations and prisons were regularly inspected by the Department of Public Prosecutions, and proper treatment of detainees was further guaranteed by continued contact between the defence lawyer and the accused. A court order was needed in order for a person to be detained; in the event of there being no accusation, the person had to be released immediately.

23. The civil, not the criminal courts, dealt with cases of forgery.

24. The Jamahiriya could boast a number of NGOs active in the human rights field, such as the Libyan Arab Committee on Human Rights in the Age of the Masses, which monitored the implementation of international human rights commitments, the Association of Barristers, the Libyan Lawyers Association, the Committee on Fundamental Freedoms and the Prosecutors' Association. Certain of those organizations cooperated on human rights questions with national and international trade unions.

25. Amnesty International had repeatedly raised the case involving the arrest of 24 persons in the Zuwarah regic four years previously. The persons concerned had been charged with causing intentional destruction to State property and preventing one of the People's Committees from holding its meetings. They had been given a fair trial, which had beern followed by an appeal. The initial ruling had been upheld in some cases and overturned in others. Defence lawyers had been present throughout the proceedings and there had been no pre-trial contact with the police.

26. Ms. AL-HAJJAJI (Libyan Arab Jamahiriya), responding to a question raised by Mr. Camara concerning the status of freedom fighters, cited the Great Green Document on Human Rights, which stated inter alia that all peoples had a right to freedom and self-determination (Principle 16) and that Libyan citizens would uphold freedom everywhere in the world and assist the oppressed (Principle 18).

27. With the recent lifting of the economic embargo, the Jamahiriya had resumed its regional and international role, including various peacekeeping activities in the Great Lakes region, Sudan and the Philippines.

28. Particularly serious crimes continued to be punishable by the death penalty. The Libyan Arab Jamahiriya had not yet signed the Second Optional Protocol on Civil and Political Rights; however, the Great Green Document on Human Rights urged Libyan society to work towards the ultimate elimination of capital punishment. A condemned person had the right to appeal, and his sentence could be commuted in the event that there was no danger to society.

29. The Jamahiriya also safeguarded a person's right to physical integrity: scientific experiments could not be conducted on a living person without his consent; and the death penalty for pregnant women was suspended until two months after the delivery.

30. Minors were not subject to capital punishment, but to a sentence of at least five years in a specialized institution for juveniles.

31. Domestic law provided for amnesty and for the commutation of sentences. A general amnesty must be issued by Parliament; a personal amnesty could, in certain cases, be issued by the competent authority. In cases of capital punishment for murder, the sentence could be commuted at the request of the father or guardian of the victim. A consensus had not yet been reached in the Jamahiriya as to whether the death penalty should be abolished, but such was the wish of the legislative authorities.

32. There were currently a number of NGOs in the Jamahiriya active in the field of human rights. They were legal entities whose role was to uncover and investigate allegations of human rights abuses and provide assistance to potential victims.

33. The Jamahiriya was currently using the media in its efforts to further the development of civil society. Human rights defenders were supported by the State, and participation in human rights organizations was encouraged.

34. In view of the economic difficulties resulting from seven years of sanctions, the Libyan Arab Jamahiriya was currently not in a position to contribute to the United Nations Voluntary Fund for Victims of Torture. Mr. Sørensen's comments would, however, be referred to the Libyan authorities at the earliest opportunity. Once the sanctions were fully lifted, the State party would be able to step up its international and regional activities.

35. The sentence of flogging was included in Libyan legislation as a deterrent, but it was not used in practice.

36. A number of Committee members had expressed concern about reports that people were dying in captivity because of ill-treatment or lack of medical

care. Libya's population of 4 million was entirely composed of Arab Muslims, with no minorities. Under Islam, torture was prohibited even against animals. As for health care, a vast network of public hospitals provided medical treatment and drugs without charge for all citizens and foreign residents; some foreigners came from neighbouring countries to take advantage of the system. If foreigners were treated free of charge, the State could not possibly deny its citizens in prison medical care. Comprehensive medical units were assigned to each police station, detention centre and prison, with a doctor on call 24 hours a day. People died in prisons all over the world. If inmates died in Libyan prisons, it could be from old age or other natural causes. A person serving a life sentence would, of course, eventually die in prison. Death in captivity was not necessarily the result of ill-treatment or lack of medical care.

37. Mr. SØRENSEN put a question concerning article 3 of the Convention. The Libyan delegation had said that the State party accepted all refugees and turned none back. The Committee had received information according to which the Libyan Arab Jamahiriya had sent some Tunisian citizens, and in particular people belonging to a movement called Al-Nahda, back to Tunisia, where they had been subjected to ill-treatment. He understood that such persons had not been considered as refugees, as both countries were members of the Arab Maghreb Union. Had such expulsions taken place?

38. The Committee had been informed that, under the national law, the State party would not execute a pregnant woman until two months after she had given birth. While the question of the death penalty did not fall directly within the Committee's mandate, inhuman and degrading treatment did. Had there been any such cases in the past 10 years?

39. Mrs. AL-HAJJAJI said she could not provided an immediate answer to the question concerning capital punishment but that the delegation would later send the information requested. Regarding the return of Tunisians, the national legislation did indeed provide protection to refugees. The Libyan Arab Jamahiriya was a party to the Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organization of African Unity, which was broader in scope than the 1951 Convention relating to the Status of Refugees. On the other hand, since 1989 all citizens of the countries of the Arab Maghreb Union had been treated equally within each member State. The returned Tunisians did not have the status of refugees and had not been accorded the specific protection which came with that status. Though the Criminal Code stipulated that persons who committed crimes of a political nature could not be extradited, a number of the Tunisians in question had been convicted of criminal offences by the competent courts in Tunisia. The assertion by some that they had been persecuted as members of an opposition party was unfounded. As for the report by Amnesty International to the effect that they had been subjected to torture, the Libyans had merely handed them over to the authorities who had already convicted them, with a view to application of those sentences.

40. Mr. YAKOVLEV raised a question concerning a provision of the Code of Criminal Procedure under which detainees accused of crimes or misdemeanours against the State could be held for seven days before being sent before a prosecutor. Generally, suspects could not be held for more than 24 hours

without being indicted. What was the reason for that exception? Could the delegation provide statistics concerning the frequency with which it was actually applied?

41. An article of the Penal Code stipulated that the death penalty would be applicable to anyone who called for "the establishment of any grouping, organization or formation prohibited by law, or established, organized, administered or financed it, provided a place for its meetings, joined it, or encouraged it by whatever means, money or benefits of any kind, or from any source or person, with the intention of establishing, or preparing to establish, a prohibited grouping, organization or formation". It further provided that there should be no difference in the severity of the punishment applied to leaders and subordinates, however low the position they held, regardless of whether the organization was based in the country or abroad. Would that provision cover any organization created without prior authorization? Did the rules not differentiate between the punishments applied to actual perpetrators of offences, accomplices, and those who merely intended or attempted to carry out an infraction? Would the provision apply to any organizations established without the prior approval of the authorities, including those set up to monitor torture by State bodies or to act as political opposition parties? Finally, could the State party tell the Committee to what extent those provisions had been invoked?

42. Mr. TLEEBA (Libyan Arab Jamahiriya) said the seven-day period of detention of persons suspected of crimes against the State was applied rarely, and only in particularly serious cases, where the suspects had used armed violence to achieve their objectives. The legislature had allowed for some flexibility so as to permit the judicial police and the security services to follow up the matter and clarify the case. In any event, from the outset all procedures had to be followed under the supervision of the Department of Public Prosecutions. He believed the provision for seven-day detention had not been applied for a considerable time, but he would have to look into the matter and send more specific information to the Committee.

43. With respect to the article providing for the possibility of capital punishment inter alia for the establishment of certain organizations and groupings, he stressed that the Libyan Arab Jamahiriya was a direct democracy and that the article in question had been adopted by the people in the People's Congresses. It was used against parties which resorted to armed violence as a way of obtaining power. As for differentiation between punishments for the various types of offender, the judge would have discretionary power and would hand down sentences commensurate with the responsibility of each convicted person. Recognized and peaceful NGOs and human rights organizations, which had humanitarian objectives in line with the country's legislation and Constitution, did indeed exist and were entitled to investigate allegations of ill-treatment or torture.

44. The CHAIRMAN thanked the delegation for their answers to the questions raised.

45. The delegation of the Libyan Arab Jamahiriya withdrew.

The public part of the meeting rose at 5.00 p.m.